

## REMARKS

The Examiner has required a restriction to one of six groups under 35 U.S.C. §121. The Examiner contends that the inventions of Groups I-VI are distinct, each from the other.

Applicants respectfully assert that a single search would necessarily result in a complete search of the art related to the claims as filed. In addition, Applicants respectfully assert, contrary to the Examiner's contention, that to search and examine the subject matter of the claims as filed would not be a serious burden on the Examiner. The M.P.E.P. § 803 (Eighth Edition, August 2001) states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Accordingly, Applicants respectfully request that the Restriction Requirement under 35 U.S.C. §121 to Groups I-VI be withdrawn.

In order to be fully responsive, however, Applicants hereby provisionally elect with traverse to prosecute the claims of **Group II** (claims 12-16), defined by the Examiner as a method of treating a hypoproliferative cell disorder or disorder involving increased cell death in a patient comprising administering an EPHA2 antagonistic agent, wherein the antagonistic agent is an antibody, for prosecution in the application.

Upon the allowance of the method claims of **Group II**, Applicants request that any withdrawn method claims that depend from or otherwise include all the limitations of the allowable composition claims of **Group II** be rejoined in accordance with the provisions of MPEP § 821.04.

### **Species Election**

The Examiner has further required a species election under 35 U.S.C. §121 to a single disclosed species for each of claims 22 and 23. Applicants assert that, pursuant to MPEP §803.2, the subject matter of the individual species can be examined together in a single application without imposing a serious burden on the Examiner.

In order to be fully responsive, however, Applicants provisionally elect the following species: **an antibody that immunospecifically binds II-9.**

### **Anticipated Rejoinder of Claims Pursuant to M.P.E.P. § 821.04**

The Examiner has required restriction between various method of treatment claims. Applicants have elected to prosecute the method claims of **Group II** (claims 12-16), defined by the Examiner as a method of treating a hypoproliferative cell disorder or disorder involving increased cell death in a patient comprising administering an EPHA2 antagonistic agent, wherein the antagonistic agent is an antibody. Applicants respectfully point out that certain nonelected claims (*e.g.*, claims 21-23) are directed to methods that can be used in combination with the elected claims. Upon allowance of the elected claims, Applicants respectfully request that the Examiner rejoins these claims (*e.g.*, claims 21-23) pursuant to MPEP § 821.04.

The Attorney for the Applicants retains the right to petition from the restriction requirement under 37 C.F.R. § 1.144. Should the species restriction be maintained, Applicants, upon allowance of a generic claim, will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim pursuant to 37 C.F.R. §1.141.

Applicants reserve the right to file a continuing application or take such other appropriate action as deemed necessary to protect the non-elected inventions. Applicants do not abandon or waive any rights in the non-elected inventions.

### **Conclusion**

Applicants respectfully request that the remarks of the present Response be entered and made of record in the present application. The application is believed to be in condition for allowance. Early notice to that effect is earnestly solicited. If, in the opinion of the Examiner, a telephone conference would expedite prosecution, the undersigned can be reached at the telephone number indicated below. If any additional fees are required in connection with this paper, please charge Deposit Account No. 500479 for the appropriate amount.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael G. Penn', written over a horizontal line.

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Date: September 28, 2006

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